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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/734,803 | 12/12/2000 | Maurice Raymond Hickling | 20526/111695 | 5200 |

7590 07/16/2002
Mark E. Waddell, Esq.
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New York, NY 10167-0034

EXAMINER

GOLLAMUDI, SHARMILA S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1616

DATE MAILED: 07/16/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/734,803

Applicant(s)

HICKLING, MAURICE RAYMOND

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Amendment A filed on 4/18/02 is acknowledged.

Claims 1-12 are included in the prosecution of this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Rejection of claims 1-8, 11, and 12 under 35 U.S.C. 103(a) as being unpatentable over Ribier et al in view of Krutak et al (5951718) is maintained.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Ribier discloses a cubic gel particle where the active agent is included therein and the phytantriol is dissolved in the dispersing agent. Applicant argues Ribier as whole discloses a cosmetic and dermatological composition as a delivery system for various agents and there would be no motivation to look to Ribier to make a hair colorant composition.

Applicant argues that Krutak teaches processes for non-permanently coloring keratinous fibers and that Krutak as a whole teaches coloring agents in a polymer solution.

Ribier teaches phytantriol and instant dispersing agent. The examiner points out that the instant claim language does not exclude cubic particles in the phytantriol and

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dispersing agent part of the composition. Further, the instant claims are hair color composition claims, which require the instant agents and Ribier discloses phytantriol, instant dispersing agent, and hair dye. Ribier teaches the phytantriol compositions have excellent stability, satisfactory sensory feel, and imparts good hydrating power thereto on column 2, lines 20-22 and column 7, lines 15-16. Further, as recognized by the applicant, Ribier discloses the active agents that are suitable for the invention, such as natural hair dyes and direct dyes on column 6, lines 7-10 and 50-55. Therefore, one of ordinary skill would look to Ribier since Ribier teaches a stable, hydrating phytantriol composition, which can include hair dye molecules.

The examiner points to Ribier's statement that the "these compositions... are obtained by dispersing cubic gel particles based on phytantriol in an aqueous medium in the present of at least one water-soluble surface active agent which has a fatty chain" on column 2, lines 20-25, which reads on the instant claims. The active agent is then also added.

As recognized by the applicant, Krutak discloses anthraquinone dyes. The examiner points out that Krutak is relied upon for its disclosure of the conventional knowledge and use of semi-permanent dyes such as anthraquinone dyes (Note column 6, beginning on line 34) and one's motivation to use the instant hair dye. Krutak disclose that the instant hair dye is very resistant to color bleeding.

Therefore the motivation to combine Ribier and Krutak is that Ribier teaches phytantriol compositions provide hydration and stability and discloses that permanent (direct dyes) and semi-permanent (natural dyes) may be incorporated and Krutak

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teaches the use of anthraquinone (semi-permanent) dyes in the art and their resistance to bleeding. Thus, if a semi-permanent coloring composition with instant colors without bleeding, one would look to Krutak who discloses the conventional use of the instant dyes.

Rejection of claim 9-10 under 35 U.S.C. 103(a) as being unpatentable over Ribier et al cited above, in further view of Wenke et al (5628799), is maintained.

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Wenke teaches different dyes such as dopa compounds and the kit disclosed teaches one container containing a dopa species with a direct dye and the second container containing an oxidation solution. Thus, the applicant argues that there is no motivation to combine a phytantriol composition with Wenke's hair dye composition.

The examiner points out that Wenke is used to teach the motivation to separate oxidation couplers and bases in direct dyes. The instant dependent claims recite the use of a permanent dye in the phytantriol composition. Ribier as set forth above teaches the phytantriol composition and discloses the use of direct dyes (also known as permanent dyes) with oxidation couplers and bases in the composition. Wenke teaches a permanent dye in a kit that separates the reactants so as to prevent reaction of the product before application (Note column 12, lines 1-10). Therefore, one would be motivated to use Wenke's kit to prevent the reactants of Ribier's direct dyes from mixing before the required time.

New Rejection in Light of Amendments

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "hair colorant composition comprising from about .1 to about 5% by weight phytantriol dissolved in about .1% to about 3% by weight of a dispersing agent, and from about .1 to about 5% of a hair dye composition consisting essential of a color molecule" in the instant independent claims are confusing. The "comma" between the phytantriol and dispersing agent reads as though the phytantriol is dissolved in the dispersing agent and the composition additionally contains a hair dye composition. However, the arguments imply that the phytantriol is dissolved in the dispersing agent and the hair composition. Support is not found for this on the pages recited that claim support. Instant example 1 dissolves phytantriol in the dispersing agent and then the hair dye composition is added which is also seen in the recited page 4.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims recite, "consisting essentially of a color molecule"; the support for this amendment was not found on page 4 or example 3. The recited pages with the alleged support only read on hair dye but not only a hair color molecule.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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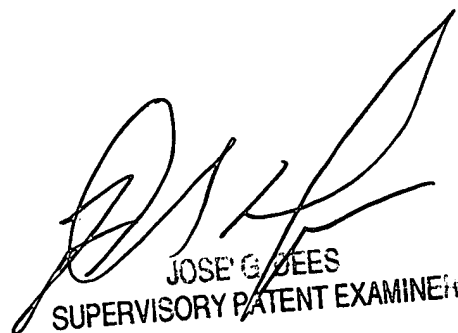
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-308-0196.

SSG


July 3, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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